

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BOB GRANT, *et al.*, on behalf of
themselves and all others similarly situated,

Case No. CV11-3118 RGK (FFMx)

Plaintiffs,

**[PROPOSED] PROTECTIVE
ORDER**

NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION, *et al.*,

NOTE CHANGES MADE BY THE COURT

Defendants.

[PROPOSED] ORDER

Pursuant to the parties' Stipulated Protective Order filed on December 13, 2011, the Court HEREBY ORDERS the entry of the following Protective Order:

I. **PURPOSES AND LIMITATIONS**

5 Disclosure and discovery activity in this action are likely to involve
6 production of confidential, proprietary, or private information for which special
7 protection from public disclosure and from use for any purpose other than
8 prosecuting this litigation or, upon agreement by the parties or a court order, any
9 other related litigation would be warranted. Accordingly, the parties hereby
10 stipulate to and petition the Court to enter the following Protective Order.

11 The parties acknowledge that this Order does not confer blanket protections
12 on all disclosures or responses to discovery and that the protection it affords
13 extends only to the limited information or items that are entitled under the
14 applicable legal principles to treatment as confidential. The parties further
15 acknowledge, as set forth in Section 10 (FILING PROTECTED MATERIAL),
16 below, that this Stipulated Protective Order creates no entitlement to file
17 confidential information under seal; Local Rule 79-5 sets forth the procedures that
18 must be followed and reflects the standards that will be applied when a party seeks
19 permission from the Court to file material under seal.

II. DEFINITIONS

21 **2.1 Challenging Party**: a Party or non-party that challenges the
22 designation of information or items under this Order.

23 **2.2 “Confidential” Information or Items:** information (regardless of
24 how generated, stored or maintained) or tangible things that qualify for protection
25 under standards developed under Federal Rule of Civil Procedure 26(c).

26 **2.3 Counsel (without qualifier):** Outside Counsel and House Counsel
27 (as well as their support staffs).

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1 **2.4 Designating Party:** a Party or non-party that designates information
2 or items that it produces in Discovery Material as “Confidential” or “Highly
3 Confidential – Attorneys’ Eyes Only.”

4 **2.5 Disclose or Disclosure:** allowing or failing to take reasonable steps
5 under the circumstances to prevent: (1) visual inspection of a designated document
6 (or any summary, description, abstract, or index thereof) by an individual not
7 authorized under this order; or (2) any communication that reveals, reflects,
8 paraphrases, conveys, or otherwise discloses the substance or form of all or any
9 information that has been part of a designated document (or any summary,
10 description, abstract, or index thereof).

11 **2.6 Discovery Material:** all items or information, regardless of the
12 medium or manner generated, stored, or maintained (including, among other
13 things, testimony, transcripts, or tangible things) that are produced or generated in
14 disclosures or responses to discovery in this matter.

15 **2.7 Expert:** a person with specialized knowledge or experience in a
16 matter pertinent to the litigation who has been retained by a Party or its Counsel to
17 serve as an expert witness or as a consultant in this action and who is not a past or
18 a current employee of a Party or of a competitor of a Party’s and who, at the time
19 of retention, is not anticipated to become an employee of a Party or a competitor of
20 a Party. This definition includes a professional jury or litigation consultant
21 retained in connection with this litigation.

22 **2.8 “Highly Confidential – Attorneys’ Eyes Only” Information or**
23 **Items:** very sensitive “Confidential Information or Items” whose Disclosure to
24 another Party or non-party would create a substantial risk of serious injury either to
25 the Producing Party or a non-party (e.g., a retired player or licensee) that could not
26 be avoided by less restrictive means.

27 **2.9 House Counsel:** attorneys who are employees of a Party.

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1 **2.10 Outside Counsel:** attorneys who are not employees of a Party but
2 who are retained to represent or advise a Party in this action, and are counsel of
3 record in this action.

4 **2.11 Party:** any party to this action, including the party's consultants,
5 retained Experts, and Outside Counsel (and their support staff), and, where the
6 party is a corporation or organization, its officers, directors, and employees.

7 **2.12 Producing Party:** a Party or non-party that produces Discovery
8 Material in this action.

9 **2.13 Professional Vendors:** persons or entities that provide litigation
10 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
11 demonstrations; obtaining, organizing, storing, retrieving data in any form or
12 medium; etc.) and their employees and subcontractors.

13 **2.14 Protected Material:** any Discovery Material that is designated as
14 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

15 **2.15 Receiving Party:** a Party that receives Discovery Material from a
16 Producing Party.

17 **III. SCOPE**

18 The protections conferred by this Stipulation and Order cover not only
19 Protected Material (as defined above), but also any information copied or extracted
20 therefrom, as well as all copies, that might reveal Protected Material. However,
21 the protections conferred by this Stipulated Protective Order do not cover the
22 following information: (a) any information that is in the public domain at the time
23 of disclosure to a Receiving Party or becomes part of the public domain after its
24 disclosure to a Receiving Party as a result of publication not involving a violation
25 of this Order, including becoming part of the public record through trial or
26 otherwise; and (b) any information known to the Receiving Party prior to the
27 disclosure or obtained by the Receiving Party after the disclosure from a source
28 who obtained the information lawfully and under no obligation of confidentiality to

1 the Designating Party. Notwithstanding the foregoing, and as set forth in Section
 2 6.3 below, Discovery Material shall be governed by the level of protection to
 3 which it is entitled under the Producing Party's designation until the Court rules on
 4 any challenge and/or the parties resolve any dispute over the designation. Any use
 5 of Protected Material at trial shall be governed by a separate agreement or order.

6 **IV. DURATION**

7 Even after the termination of this litigation, the confidentiality obligations
 8 imposed by this Order shall remain in effect until a Designating Party agrees
 9 otherwise in writing or a court order otherwise directs.

10 **V. DESIGNATING PROTECTED MATERIAL**

11 **5.1 Exercise of Restraint and Care in Designating Material for**
 12 **Protection.** Each Party or non-party that designates information or items for
 13 protection under this Order must take care to limit any such designation to specific
 14 material that qualifies under the appropriate standards. A Designating Party must
 15 take care to designate for protection only those parts of material, documents, items,
 16 or oral or written communications that qualify – so that other portions of the
 17 material, documents, items, or communications for which protection is not
 18 warranted are not swept unjustifiably within the ambit of this Order.

19 If it comes to a Party's or a non-party's attention that information or items
 20 that it designated for protection do not qualify for protection at all, or do not
 21 qualify for the level of protection initially asserted, that Party or non-party must
 22 promptly notify all other parties that it is withdrawing the mistaken designation.

23 **5.2 Manner and Timing of Designations.** Except as otherwise provided
 24 in this Order (*see, e.g.*, second paragraph of Section 5.2(a), below), or as otherwise
 25 stipulated or ordered, Discovery Material that qualifies for protection under this
 26 Order must be clearly so designated before the material is disclosed or produced.

27 Designation in conformity with this Order requires:

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5 A Party or non-party that makes original documents or materials available
6 for inspection need not designate them for protection until after the inspecting
7 Party has indicated which material it would like copied and produced. During the
8 inspection and before the designation, all of the material made available for
9 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY.” After the inspecting Party has identified the documents it wants copied
11 and produced, the Producing Party must determine which documents, or portions
12 thereof, qualify for protection under this Order, then, before producing the
13 specified documents, the Producing Party must affix the appropriate legend
14 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY”) on each page that contains Protected Material. If only a portion or
16 portions of the material on a page qualifies for protection, the Producing Party also
17 must clearly identify the protected portion(s) (e.g., by making appropriate
18 markings in the margins) and must specify, for each portion, the level of protection
19 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY”).

21 (b) for testimony given in deposition or in other pretrial or trial
22 proceedings, the Party or non-party that seeks to designate testimony for protection
23 hereunder may invoke on the record (before the deposition or proceeding is
24 concluded) a right to have up to 20 days after receipt of the transcript of the
25 deposition, hearing or other proceeding to identify the specific portions of the
26 testimony as to which protection is sought and to specify the level of protection
27 being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are

1 appropriately designated for protection within the 20 days after receipt of the
2 transcript of the deposition, ~~hearing or other proceeding~~ shall be covered by the
3 provisions of this Stipulated Protective Order. (FFM)

4 Transcript pages containing Protected Material must be separately bound by
5 the court reporter, who must affix to the top of each such page the legend
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY,” as instructed by the Party or non-party seeking to designate testimony for
8 protection hereunder.

9 (c) for information produced in some form other than documentary,
10 including information produced in electronic format, and for any other tangible
11 items, that the Producing Party affix in a prominent place on the exterior of the
12 container or containers, or electronic media (including but not limited to CD or
13 DVD), in which the information or item is stored the legend “CONFIDENTIAL”
14 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions
15 of the information or item warrant protection, the Producing Party, to the extent
16 practicable, shall identify the protected portions, specifying whether they qualify as
17 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

18 **5.3 Inadvertent Failures to Designate.** Notwithstanding Section 5.2
19 above, if timely corrected, an inadvertent failure to designate qualified information
20 or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” does
21 not, standing alone, waive the Designating Party’s right to secure protection under
22 this Order for such material. If material is appropriately designated as
23 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material
24 was initially produced, the Receiving Party, on timely notification of the
25 designation, must make reasonable efforts to assure that the material is treated in
26 accordance with the provisions of this Order.

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1 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a
 3 designation of confidentiality at any time. Unless a prompt challenge to a
 4 Designating Party's confidentiality designation is necessary to avoid foreseeable
 5 substantial unfairness, unnecessary economic burdens, or a later significant
 6 disruption or delay of the litigation, a Party does not waive its right to challenge a
 7 confidentiality designation by electing not to mount a challenge promptly after the
 8 original designation is disclosed.

9 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute
 10 resolution process by providing written notice of each designation it is challenging
 11 and describing the basis for each challenge. To avoid ambiguity as to whether a
 12 challenge has been made, the written notice must recite that the challenge to
 13 confidentiality is being made in accordance with this specific paragraph of the
 14 Protective Order. The parties shall attempt to resolve each challenge in good faith
 15 and must begin the process by conferring directly (in voice to voice dialogue; other
 16 forms of communication are not sufficient) within 10 days of the date of service of
 17 notice of a challenge. In conferring, the Challenging Party must explain the basis
 18 for its belief that the confidentiality designation was not proper and must give the
 19 Designating Party an opportunity to review the designated material, to reconsider
 20 the circumstances, and, if no change in designation is offered, to explain the basis
 21 for the chosen designation. A Challenging Party may proceed to the next stage of
 22 the challenge process only if it has engaged in this meet and confer process first or
 23 establishes that the Designating Party is unwilling to participate in the meet and
 24 confer process in a timely manner.

25 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge
 26 without court intervention, the Challenging Party shall initiate the procedures set
 27 forth in Civil Local Rule 37 (and in compliance with Civil Local Rule 79-5, if
 28 applicable) to challenge confidentiality. The burden of persuasion in any such

1 challenge proceeding shall be on the Designating Party. Frivolous challenges, and
 2 those made for an improper purpose (*e.g.*, to harass or impose unnecessary
 3 expenses and burdens on other parties) may expose the Challenging Party to
 4 sanctions. All parties shall continue to afford the material in question the level of
 5 protection to which it is entitled under the Producing Party's designation until the
 6 court rules on the challenge.

7 **VII. ACCESS TO AND USE OF DISCOVERY MATERIAL**

8 **7.1 Basic Principles.** A Receiving Party may use Discovery Material that
 9 is disclosed or produced by another Party or by a non-party in connection with this
 10 case only for prosecuting, defending, or attempting to settle this litigation or, upon
 11 agreement by the parties or a court order, any other related litigation. Such
 12 Discovery Material may be Disclosed only to the categories of persons and under
 13 the conditions described in this Order. When the litigation has been terminated, a
 14 Receiving Party must comply with the provisions of Section 11 (FINAL
 15 DISPOSITION), below.

16 Protected Material must be stored and maintained by a Receiving Party at a
 17 location and in a secure manner that ensures that access is limited to the persons
 18 authorized under this Order.

19 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless
 20 otherwise ordered by the Court or permitted in writing by the Designating Party, a
 21 Receiving Party may Disclose any information or item designated
 22 CONFIDENTIAL only to:

23 (a) the Receiving Party's Outside Counsel of record in this action, as well
 24 as employees of said Counsel to whom it is reasonably necessary to Disclose the
 25 information for this litigation;

26 (b) the officers, directors, and employees (including House Counsel) of
 27 the Receiving Party, including of Defendants, to whom Disclosure is reasonably
 28 necessary for this litigation;

1 (c) Plaintiffs, and specifically Bob Grant, Dr. Clinton Jones, Walter
2 Roberts, III, Marvin Cobb, and Bernard Parrish;

3 (d) Experts (as defined in this Order) of the Receiving Party to whom
4 Disclosure is reasonably necessary for this litigation and who have signed the
5 “Agreement to Be Bound by Protective Order” (Exhibit A);

6 (e) the Court and its personnel;

7 (f) court reporters, their staffs, and Professional Vendors to whom
8 Disclosure is reasonably necessary for this litigation (and, in the case of
9 Professional Vendors, where the firm or key individual providing services has
10 signed the “Agreement to Be Bound by Protective Order” (Exhibit A));

11 (g) during their depositions, witnesses in the action to whom Disclosure is
12 reasonably necessary. Pages of transcribed deposition testimony or exhibits to
13 depositions that reveal Protected Material must be separately bound by the court
14 reporter and may not be Disclosed to anyone except as permitted under this
15 Stipulated Protective Order; and

16 (h) the author or recipient of the document containing the information or
17 the original source of the information, or a custodian having prior knowledge of
18 the information contained in the document or original source of the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS”

20 **EYES ONLY” Information or Items.** Unless otherwise ordered by the Court or
21 permitted in writing by the Designating Party, a Receiving Party may Disclose any
22 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
23 EYES ONLY” only to:

24 (a) the Receiving Party's Outside Counsel of record in this action, as well
25 as employees of said Counsel to whom it is reasonably necessary to Disclose the
26 information for this litigation;

27 (b) Experts (as defined in this Order) (1) to whom Disclosure is
28 reasonably necessary for this litigation and (2) who have signed the “Agreement to

1 Be Bound by Protective Order" (Exhibit A);
2 (c) the Court and its personnel;
3 (d) court reporters, their staffs, and Professional Vendors to whom
4 Disclosure is reasonably necessary for this litigation (and, in the case of
5 Professional Vendors, where the firm or key individual providing services has
6 signed the "Agreement to Be Bound by Protective Order" (Exhibit A)); and
7 (e) the author or recipient of the document or the original source of the
8 information.

9 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
10 **PRODUCED IN OTHER LITIGATION**

11 If a Receiving Party is served with a subpoena or an order issued in other
12 litigation that would compel Disclosure of any information or items designated in
13 this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
14 ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating
15 Party, in writing (by email, if possible) immediately and in no event more than
16 three court days after receiving the subpoena or order. Such notification must
17 include a copy of the subpoena or court order.

18 The Receiving Party also must immediately inform in writing the Party who
19 caused the subpoena or order to issue in the other litigation that some or all the
20 material covered by the subpoena or order is the subject of this Protective Order.
21 In addition, the Receiving Party must deliver a copy of this Stipulated Protective
22 Order promptly to the Party in the other action that caused the subpoena or order to
23 issue.

24 The purpose of imposing these duties is to alert the interested parties to the
25 existence of this Protective Order and to afford the Designating Party in this case
26 an opportunity to try to protect its confidentiality interests in the court from which
27 the subpoena or order issued. The Designating Party shall bear the burdens and the
28 expenses of seeking protection in that court of its confidential material – and

1 nothing in these provisions should be construed as authorizing or encouraging a
2 Receiving Party in this action to disobey a lawful directive from another court.

3 **IX. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has
5 Disclosed Protected Material to any person or in any circumstance not authorized
6 under this Stipulated Protective Order, the Receiving Party must immediately (a)
7 notify in writing the Designating Party of the unauthorized Disclosures, (b) use its
8 best efforts to retrieve all copies of the Protected Material, (c) inform the person or
9 persons to whom unauthorized Disclosures were made of all the terms of this
10 Order, and (d) request such person or persons to execute the “Acknowledgment
11 and Agreement to Be Bound” that is attached hereto as Exhibit A.

12 **X. FILING PROTECTED MATERIAL**

13 Without written permission from the Designating Party or a court order
14 secured after appropriate notice to all interested persons, a Party may not file in the
15 public record (*i.e.*, unsealed) in this action any Protected Material. A Party that
16 seeks to file under seal any Protected Material must comply with Local Rule 79-5.

17 **XI. FINAL DISPOSITION**

18 Unless otherwise ordered or agreed in writing by the Producing Party, within
19 sixty days after the final termination of this action, each Receiving Party must
20 return all Protected Material to the Producing Party or certify its destruction. As
21 used in this subdivision, “all Protected Material” includes all copies, abstracts,
22 compilations, summaries or any other form of reproducing or capturing any of the
23 Protected Material. Once the Protected Material is returned or destroyed, the
24 Receiving Party must submit a written certification to the Producing Party (and, if
25 not the same person or entity, to the Designating Party) by the sixty-day deadline
26 that identifies (by category, where appropriate) all the Protected Material that was
27 returned or destroyed, and that affirms that the Receiving Party has not retained
28 any copies, abstracts, compilations, summaries or other forms of reproducing or

1 capturing any of the Protected Material. Notwithstanding this provision, Counsel
2 are entitled to retain an archival copy of all pleadings, motion papers, trial,
3 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
4 and trial exhibits, expert reports, attorney work product, and consultant and expert
5 work product, even if such materials contain Protected Material. Any such
6 archival copies that contain or constitute Protected Material remain subject to this
7 Protective Order as set forth in Section 4 (DURATION), above.

8 Final disposition or final termination of this action shall be deemed to be the
9 later of (1) dismissal of all claims and defenses in this action, with or without
10 prejudice; and (2) final judgment herein after the completion and exhaustion of all
11 appeals, rehearings, remands, trials, or reviews of this action, including the time
12 limits for filing any motions or applications for extension of time pursuant to
13 applicable law.

14 **XII. MISCELLANEOUS**

15 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of
16 any person to seek its modification by the Court in the future.

17 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this
18 Protective Order no Party waives any right it otherwise would have to object to
19 disclosing or producing any information or item on any ground not addressed in
20 this Stipulated Protective Order. Similarly, no Party waives any right to object on
21 any ground to use in evidence of any of the material covered by this Protective
22 Order.

23 **12.3 Clawback of Inadvertent Production of Privileged Discovery.** If a
24 Party in this case through inadvertence produces or provides discovery in this case
25 that it believes is subject to a claim of attorney-client privilege, common interest
26 privilege, work product immunity, or other privilege or protection, the Producing
27 Party may give written notice to the Receiving Party that the document is subject
28 to a claim of attorney-client privilege, common interest privilege, work product

1 immunity, or other privilege or protection and request that the document be
2 returned to the Producing Party. The Receiving Party shall immediately return to
3 the Producing Party all copies of such document and shall return or destroy all
4 excerpts and summaries thereof. Return of the document by the Receiving Party
5 shall not constitute an admission or concession, or permit any inference, that the
6 returned document is, in fact, properly subject to a claim of attorney-client
7 privilege, common interest privilege, work product immunity, or other privilege or
8 protection, nor shall it foreclose the Receiving Party from moving for an order that
9 such document has been improperly designated as subject to a claim of attorney-
10 client privilege, common interest privilege, work product immunity, or other
11 privilege or protection or should be produced for reasons other than a waiver
12 caused merely by the inadvertent production. The Producing Party must preserve
13 the information until the claim is resolved. The inadvertent disclosure of any
14 privileged documents shall not be deemed a waiver of that privilege as to any other
15 documents, testimony or evidence.

16 **IT IS SO ORDERED.**

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18 Dated: December 15, 2011

/S/ FREDERICK F. MUMM
Honorable Frederick F. Mumm
United States Magistrate Judge

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EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its
5 entirety and understand the Stipulated Protective Order that was issued by the
6 United States District Court for the Central District of California on
7 _____ [date] in the case of *Grant v. National Football League Players*
8 Association, No. CV11-03118 RGK (FFMx). I agree to comply with and to be
9 bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt.

12 I solemnly promise that I will not Disclose in any manner any information or
13 item that is subject to this Stipulated Protective Order to any person or entity
14 except in strict compliance with the provisions of this Order. I further agree to
15 submit to the jurisdiction of the United States District Court for the Central District
16 of California for the purpose of enforcing the terms of this Stipulated Protective
17 Order, even if such enforcement proceedings occur after termination of this action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and telephone number]
20 as my California agent for service of process in connection with this action or any
21 proceedings related to enforcement of this Stipulated Protective Order.

22 I declare under penalty of perjury under the laws of the United States that
23 the foregoing is true and correct. Executed on _____ [date] at
24 _____ [city and state].

26 Name: _____ Signature: _____